



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,421	06/29/2001	Juha Salo	004770.00722	5222
22907 7590 09/19/2008 BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051				
EXAMINER				
SALTARELLI, DOMINIC D				
ART UNIT		PAPER NUMBER		
2623				
MAIL DATE		DELIVERY MODE		
09/19/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 09/893,421	Applicant(s) SALO ET AL.
Examiner DOMINIC D. SALTARELLI	Art Unit 2623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 45-63,65-89 and 101.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Dominic D Saltarelli/
Examiner, Art Unit 2623

Continuation of 11, does NOT place the application in condition for allowance because: Regarding the Nicolas document, applicant makes several arguments. The first is that applicants find no teaching in Nicolas regarding "the higher priority data has a higher maximum range than lower priority data." Applicants stated that they believe the examiner is equating the power spectral density of the data streams with a maximum range of each stream (applicant's remarks, page 14).

In response, the examiner is equating the actual carrier to noise ratio of each stream with a maximum range, in the very same manner in which the claimed limitation for such is supported by the originally filed specification (see applicant's specification, page 7, lines 20-24).

Second, applicants ask for clarification regarding the applicability of the Nicolas reference due to the typographical errors and ambiguous terminology used in the cited section (applicant's remarks, page 15).

The terms "channel", and "carrier" (misspelled 'career' in some areas) are interchangeable terms, as each refers to a specific frequency band upon which data is modulated. The terms "stream" and "data" are also interchangeable, referring to the actual data which is modulated upon the frequency band. Further, Nicolas's statement that the high priority data represents one fifth of the total power is a demonstration that the described modulation scheme is very similar, if not the same, as applicant's claimed modulation scheme. The high priority channel is referred to as a relatively narrowband channel which cannot carry as much data as the wider low priority channel (Nicolas, col. 5, lines 13-17), just the same as applicant's invention (see applicant's originally filed specification, page 8, lines 13-21).

Lastly, applicant argues that Nicolas also does not teach a wireless device, as required by claim 101 (applicant's remarks, page 15).

In response, the use of wireless networks and devices is anticipated by the primary reference, Gotwald, who teaches using any known communication path (see Gotwald, col. 3, lines 25-50).

Next, regarding the Banker document, applicant argues that Banker only teaches a serial transmission of data, not the claimed simultaneous, hierarchically modulated data streams (applicant's remarks, pages 16-17).

In response, the applicants are only citing the transmission of data between the headend controller and the scramblers and/or data inserters. The output from the scramblers and data inserters are all transmitted to the combiner 106, which combines all the different frequency bands into one frequency multiplexed broadcast for delivery to the receivers, as is conventional. What is important is that the different data streams (Banker, col. 11, lines 1-17) are located upon different channels (as each data stream is separately addressed to one or more different data inserters or scramblers, Banker, col. 11, lines 47-62). These different channels are all simultaneously broadcast from the combiner to the receivers. The streams are considered hierarchically modulated because Banker teaches some streams have a higher priority than others (Banker, col. 11, lines 11-17)..